

# The Harland Law Firm LLP

JAMES ASTE  
HEATHER S. GIMLE  
GERALD R. HARLAND  
ALLISON G. JACKSON  
GERIANNE JOHNSON  
CAROL J. MARTINEZ  
RICHARD SMITH

ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP  
622 H Street  
Eureka, California 95501  
(707) 444-9281  
Facsimile: (707) 445-2961  
E-Mail: rsmith@harlandlaw.com

OTHER OFFICE:  
954 MAIN STREET  
FORTUNA, CA 95540  
(707) 725-4426  
FAX: (707) 725-5738

January 17, 2007

Members of the California Transportation Commission  
Stephen Maller  
Deputy Director  
1120 N Street, Room 2221  
Sacramento, California 95814

Via Overnight Service and Email [Stephen\_Maller@dot.ca.gov]

re: HIGHWAY R/W MATTERS  
Appearance: 01-DN-101-PM 43.6/45.9  
EA: 345409  
Parcels: 11519-1,2,3  
Grantor: HW3, LLC  
CTC Hearing on February 1, 2007  
My File: 7859F

Dear Commission Members:

I represent the landowner in this Resolution of Necessity matter. I have reviewed the CalTrans Review Panel Report and while it attempts to describe the landowners position as was taken at the Review Panel hearing it does not do justice to the issues raised by the landowner. As a result, I ask for your review and consideration of this letter.

The findings that you must make to approve a Resolution of Necessity are found in Calif. Cd. Civil Procedure section 1245.230. You must make each of the following four findings:

- (1) The public interest and necessity require the proposed project.
- (2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.<sup>1</sup>
- (3) The property described in the resolution is necessary for the proposed project.
- (4) That either the offer required by Section 7267.2 of the Government Code

---

<sup>1</sup> This letter calls your specific attention to this finding.

has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

The landowner believes that you can make each of these four findings except for finding (2). While the project may have been, "planned or located in the manner that will be most compatible with the greatest public good," nevertheless, its planning has been deficient and will cause more damage to the landowner's property than is required to meet the greatest public good. As a result, you cannot make finding 2.

There has been a significant volume of discussion about the history of this site that has probably more obscured than highlighted the true issue before you. Nevertheless, in order to put the landowner's position into context, it will be necessary to review a portion of the site's past history.<sup>2</sup>

There is a significant drainage located east of the project site that all drains to the west and down to Highway 101. When the highway was originally constructed in the 1930's all of the water that funneled down from this drainage to the highway was relocated to a 24" culvert under the highway and was then drained along the west side of the highway to the north to a ditch where it was allowed to flow west and into the ocean.

In 1982 CalTrans replaced the original 24" culvert with a 42" culvert. The reasons for this change have never been clearly stated,<sup>3</sup> however, this change nearly doubled the volume of storm surge that could come out of the drainage, under the highway and onto the landowner's property. In times of such large storm surges, the drainage facilities on the west side of the highway were overwhelmed and the area flooded. In 2000 the landowner did install a 24" culvert to attempt to improve things. However, just as has occurred since Caltrans nearly doubled the size of the culvert under the highway, when there were storm surges the property still flooded.

LANDOWNER ACKNOWLEDGES THAT, WITH THE PASSAGE OF NEARLY 25 YEARS, THE FLOODING CAUSED BY THE 1982 EXPANSION OF THE CULVERT SIZE IS NOT RELEVANT TO THESE PROCEEDINGS. FIXING THE FLOODING THAT PREDATES THE PROJECT IS NOT THE BASIS OF THE APPLICANT'S CLAIM

---

<sup>2</sup> For a more complete history, please see the attached January 10, 2007 letter from the landowner's project manager to CalTrans.

<sup>3</sup> However, it does not take much imagination to guess that motivation must have been that the 24" culvert was too small to handle all of the water coming out of the drainage during a heavy storm surge, causing water to back up on the east side of the highway and flooding the private property on the east side of Highway 101. By nearly doubling the size of the culvert, heavy storm surges that use to back up on the east side of the highway now surged under the highway and onto the property on its west side. With the increase in the size of the storm surges, they became more that the existing west side drainage could handle and the west side began to flood.

## TO YOU OF IMPROPER PROJECT DESIGN.

This project will widen Highway 101 and significantly increase its paved area. Undisputably, this increase in pavement will result in a new increase in storm surge running off of the highway during significant rainfall. In other words, if the water volume of the current storm surge flowing onto the landowners project is X the project will result in this surge being increased to X+Y.

The point is that the project's design will unnecessarily<sup>4</sup> increase the storm surge onto the landowner's property, where there is already more water being dumped than its drainage facilities can handle during storm surges, making an historically bad problem much worse.

Somewhat disingenuously<sup>5</sup> the CalTrans Review Panel Report describes this new increase in storm surge as being, "less than one percent of the existing runoff."<sup>6</sup> While this is probably correct, what is being ignored is that while a very small percentage of a small volume of water may not be much in terms of gallons suddenly flowing onto private property, a very small percentage of a very large volume is a lot of water to suddenly surge onto the same property. In fact, from a functional standpoint, CalTrans' position on this issue is fairly irrelevant and fully misses the point.

The point is that the landowner has determined from its consultant's calculations that the increase in storm surge caused by the project's new pavement will be a volume of water that approximately equals 25% of the capacity of the landowner's existing drainage facilities. Since the present storm surges already cause flooding of the landowner's property, the project as designed will increase this flooding by nearly 25%. This is not a minor issue and it is wholly improper (and unnecessary) to address this by saying that this is the problem of the private property owner who adjoins the highway.

As stated in the beginning of this letter, the landowner is objecting to this new damage that will be caused by the project. The landowner objects to the Commission because the additional flooding is avoidable and will only occur because the present project design makes no allowance to gather up and properly deal with the additional storm surge that will be caused by significantly increasing the amount of paving dumping water onto the landowner's property.

---

<sup>4</sup> This is described as "unnecessary" because landowner believes that the project could easily be designed to capture this new runoff, redirect it and not cause new damage to private property.

<sup>5</sup> This is described as "disingenuous" because the CalTrans Review Panel Report fails to mention the landowner's position on this issue, as discussed above, even though it was clearly stated during the review hearing.

<sup>6</sup> In other words, the new storm surge caused by the new pavement will be less than 1% of the maximum storm surge of the entire pre project drainage basin.

January 17, 2007  
page 4

By making NO design allowance to address this additional storm surge that will result from the project, the project is not being, "planned ... in the manner that will be most compatible with the ... least private injury." As a result, the Commission should not approve the Resolution of Necessity because the project design is such that it will needlessly cause private injury and the project can be redesigned to redirect its additionally caused storm surge off of the adjoining private property.

In designing the project, CalTrans ignored this issue and made no allowance for the known increased flood waters from its paved surfaces other than to simply and unnecessarily dump them onto the adjoining private property. When asked to address this issue, CalTrans' position was essentially that the project has been designed, its environmental studies have been done and, essentially, now adjusting the project to not cause this additional harm is just too much trouble and delay for them. There is no sufficient justification to approve a forced taking of private property for a project that by its design will injure its neighbors when with a proper design that injury can be avoided.

Sincerely,

Richard Smith

RAS/ds  
enclosure

# HW3 LLC

Land Development

P.O. Box 2767

Harbor, Oregon 97415

Phone: (541) 412-7566

Fax: (541) 412-7646

January 10, 2007

Brian Bauman  
Right of Way Agent  
Caltrans, District 1  
PO Box 3700  
Eureka, CA 95502-3700

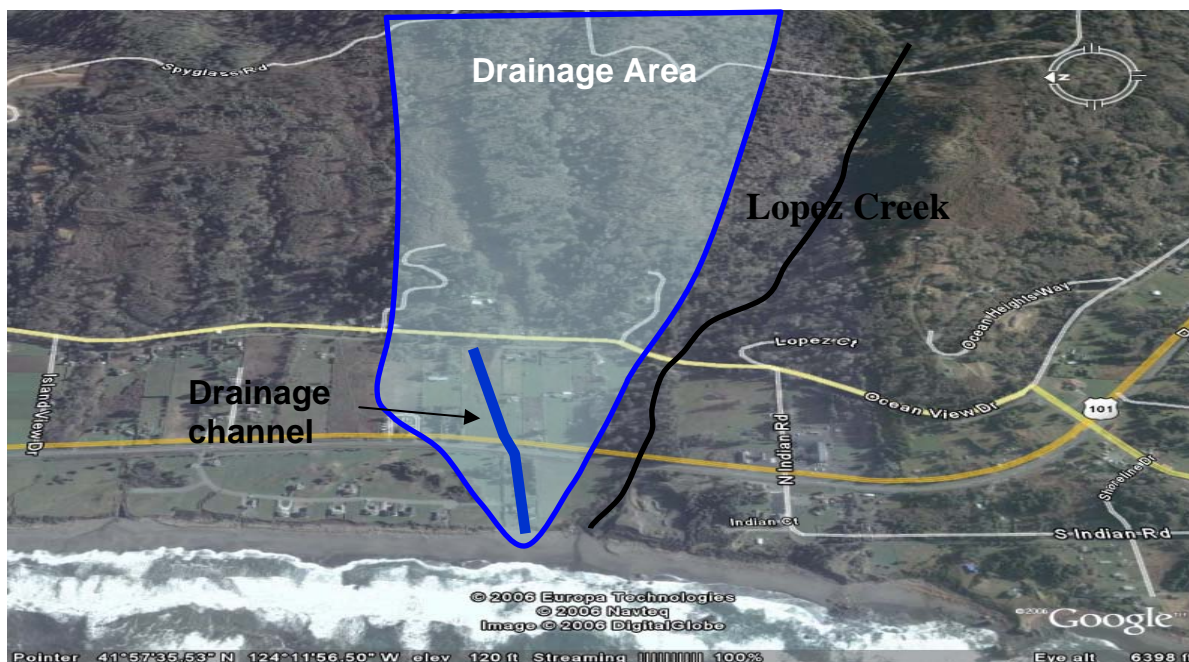
Re: Highway 101 Widening Project

Dear Mr. Bauman:

In response to your recent email of January 2, 2006 I would like to provide the following information.

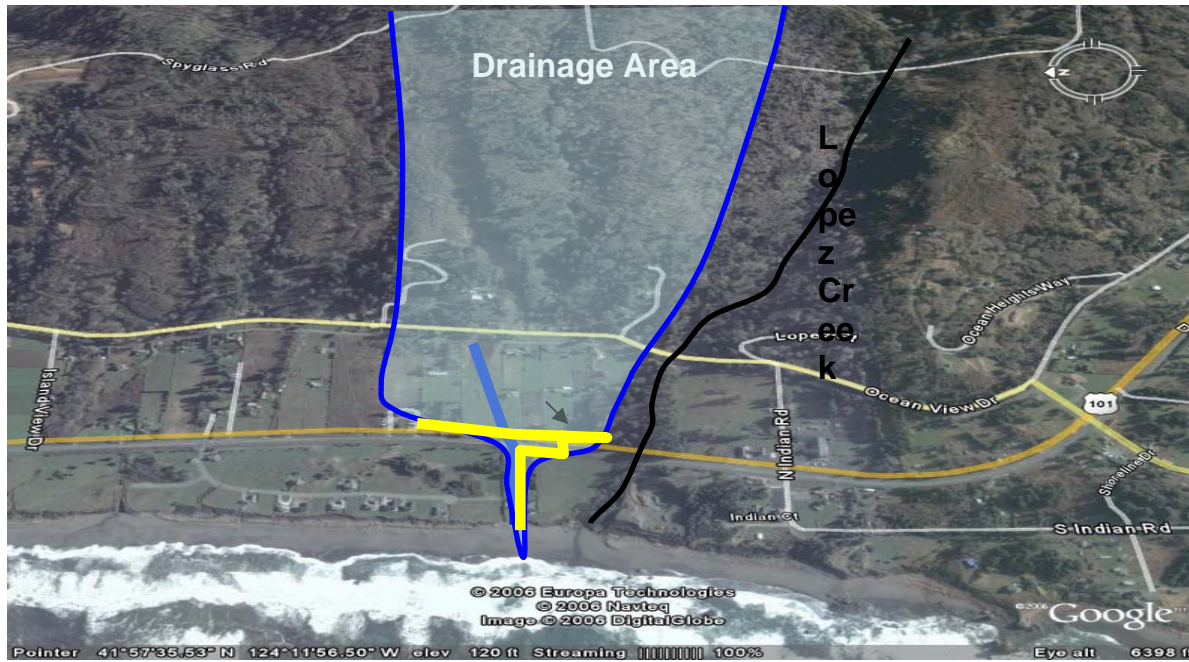
Prior to the construction of Highway 101 it appears that storm water from the hillside sheet-flowed across private property to a drainage channel and eventually to the ocean. The drainage area consists of approximately 1,400 acres.

The picture below gives an approximate location of the drainage area and drainage channel.



Source: Google Earth

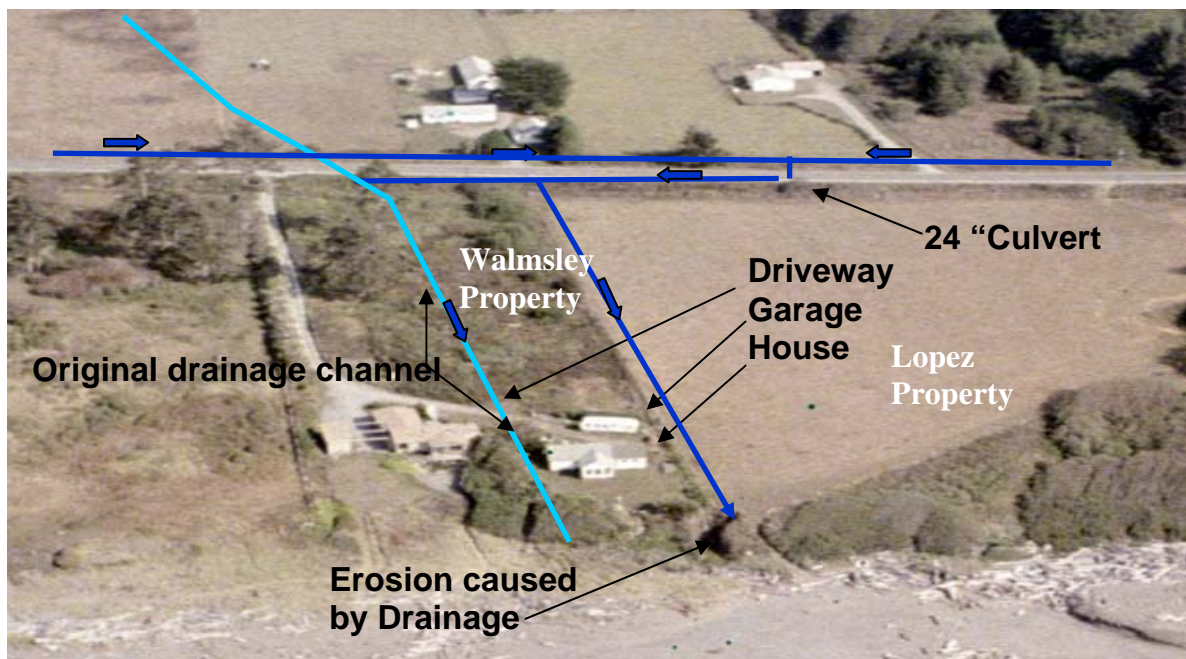
When the highway was constructed it created a dam. To relieve the dam a 24" culvert was installed south of the original drainage channel with the apparent intention of it flowing back to the north and down the original drainage. (The yellow line in the picture below shows the area of open ditch and culvert crossing.)



Source: Google Earth



The problem with the design was that the water on the west side of the highway had to run up hill to the original drainage channel. Eventually it began to create wetlands and found an easier path to the ocean, as can be seen below. The drainage on the south side of the property referred to as the “Walmsley Property” became the primary drainage area. However, because the south drainage is not well defined it often flooded onto the neighboring property (Lopez Property) to the south. Over the years it also began to severely erode the bank to the ocean.



Source: California Coastal Records Project web site (1979)

During the next 25 +/- years many changes happened.

In 1982, the 24" culvert crossing Highway 101 was replaced with a 42" culvert. We have not been able to find any reports, but we expect the culvert was upgraded due to flooding on the east side of the highway.

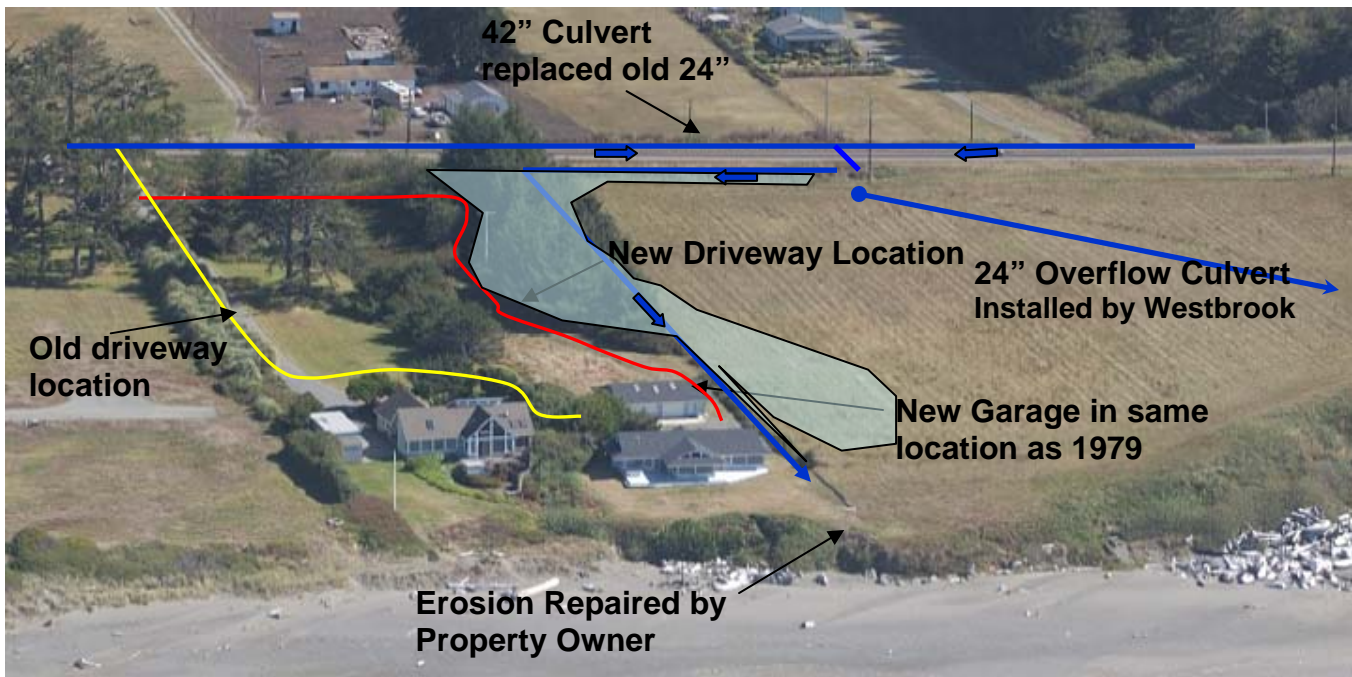
In approximately 1987, the driveway to the Walmsley property was relocated. In the picture below the location of the old and new driveways are shown in yellow and red.

In approximately 1992, Mr. Walmsley constructed a new garage in approximately the same location as the previous building was located.

In approximately 1993, the erosion at the south side of Walmsley property was repaired by the private property owners.

In 2000, to prevent further property damage, Mr. Westbrook installed a 24" overflow culvert from the 42" Caltrans culvert to Lopez Creek drainage. However, the 24" pipe currently was meant only as a temporary and partial solution to the existing problem and had no excess capacity. In fact, during peak storm water runoff it is not capable of carry the existing water.

Now, in 2007, Caltrans is preparing to widen Highway 101 and create additional runoff without any detailed study of or planned improvement to the drainage, or an evaluation of potential private property damage.



Source: California Coastal Records Project web site (2005)

It is obvious that the drainage has always caused problems for the private property owners and they have taken various measures to reduce the damage. It is also obvious that the original 24" culvert crossing the highway was inadequate to carry the flow during storm runoff.

Regardless of this interesting historical information, in 1982, the increase in the size of the Highway 101 culvert clearly had the effect of reducing the effects of flood surge on the east side of the highway by dumping that water faster onto the west side land owners. That is something that the west side land owners should have forced Caltrans to address then and these private property owners should not have been required to take private steps to attempt to correct the additional flooding - but they did. However, this is not the point. The point is that Caltrans past wrongs does not grant it a license to now widen the road and even further increase the flood surge on the west side land owners and to include no design in the project to avoid this unnecessary private injury. This additional flood surge will overwhelm the existing drainage



systems on the west side of the highway and will predictably cause unnecessary flooding damage.

CCP 1245.230 (2) requires that in order for a taking, "The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury." Caltrans has made no study of the effect of the widening of the road on its increased runoff on the west side land owners and the proposed project fails to deal with this additional runoff other than to allow it to flood the private property on the west side of Highway 101. Ignoring this damage means that the project has not been planned so that it will result in "the least private injury."

While we can keep talking around the issue, the fact is that the project as designed will additionally flood private property and the project should be designed to avoid this additional flooding. It will be our position that the CTC cannot approve the taking for the proposed project so long as it is so deficiently designed.

We have offered a solution which we still hope the District will consider.

Sincerely,

Leroy Blodgett  
Project Manager

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: January 31-February 1, 2007

Reference No.: 2.4a.  
Action Item

From: CINDY McKIM  
Chief Financial Officer

Prepared by: Bimla G. Rhinehart  
Chief  
Division of Right of Way and  
Land Surveys

Subject: **RESOLUTIONS OF NECESSITY - APPEARANCE**

## **RECOMMENDATION:**

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19539 summarized on the following page.

## **ISSUE:**

Prior to initiating Eminent Domain proceedings to acquire needed right of way for a programmed project, the Commission must first adopt a Resolution of Necessity (RON), stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure, which are:

1. The public interest and necessity require the project.
2. The project is planned to provide the greatest public good with the least private injury.
3. This property is required for the proposed project.
4. An offer to purchase the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owner is contesting the RON and has requested an appearance before the Commission to discuss the outstanding issues. The outstanding issue with the property owner is related to the drainage and relocation of the 24-inch culvert that flows diagonally across the property.

## **BACKGROUND:**

Discussions have taken place with the owner, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owner may subsequently be entitled. Adoption of the resolution will not interrupt the Department's efforts to secure equitable settlement. In accordance with statutory requirements, the owner has been advised that the Department is requesting the resolution at this time. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19539 - HW3, LLC

01-DN-101-PM 43.81 - Parcel 11519-1, 2, 3 - EA 345409.

Right of Way Certification Date: 01/01/07; Ready to List Date: 02/01/07. Conventional highway - construct a two-way left turn pocket. Authorizes condemnation of land in fee for a State highway and a temporary easement for construction purposes. Located near the town of Smith River near the intersection of State Route 101 and North Indian Road. APN 101-020-30.

Attachments

## SUMMARY OF ISSUES

The property owner, HW3, LLC (HW3), through their representatives, does not contest the need for the project. However, they have expressed concerns regarding impacts to their property as a result of the Department's proposed project.

The following is a description of the concerns expressed by representatives of the property owner, followed by the Department's response.

### **Owner:**

That the Department up-grade the southern access to a public road intersection so the parcel may be developed to its highest and best use as 15 one-acre home sites.

### **Department Response:**

The Department determined that meeting the property owner's request for a public road intersection at this location would require additional design and environmental work that would not be possible at this late date. Furthermore, meeting HW3's request in full could be considered an inappropriate use of public funds in that the Department would be helping a private landowner to develop his property. With these limiting conditions in mind, the Department and property owner reached a compromise for the southern driveway access. The Department has offered to design and construct a standard 24-foot wide commercial road approach because the driveway serves a permitted quarry operation that the Department may use for material disposal. The Department confirmed this driveway would be built to the commercial standard, which takes into consideration large truck traffic.

### **Owner:**

That the Department upgrade the northern access to a public road intersection so the parcel may be developed to its highest and best use as 15 one-acre home sites.

### **Department Response:**

The Department will design and construct a standard residential 12-foot road approach at the northern location. This is an upgrade from the smaller residential driveway that currently exists but which meets the Department's standard for residential driveways. Meanwhile, HW3 will apply for encroachment permits to upgrade to public road intersections at both driveway locations. Once these permits are approved, HW3 will "tag on" the difference between what the Department is designing and building and what HW3 wants, incurring its own costs for the additional design and construction. The Department has received HW3's encroachment permit application, and it is currently under review.

To summarize, the Department is designing a 24-foot commercial driveway approach at the quarry location and a 12-foot residential access at the northern driveway. Upgrading to public road intersections is the responsibility of the property owner.

**Owner:**

That the Department extend the 42-inch highway culvert located at PM 43.82 south along the right of way to Lopez Creek in order to alleviate flooding of the parcel, which allegedly occurs during periods of high storm water runoff. HW3 contends that, when the highway was originally built, drainage was never adequately designed to carry storm water south to Lopez Creek. In more recent years, as a temporary fix, HW3 built a catch basin and drop inlet directly in front of the 42-inch Department culvert and diverted a portion of the water diagonally across the property to Lopez Creek through a 24-inch culvert. This was done under a Department encroachment permit. If the Department were to agree to extend its culvert south along the right of way, HW3 could eliminate its culvert.

**Department Response:**

The owner, whose family has held the property since the early 1900s, claims the flooding problem started after the highway was built, and now is the time to fix it due to the highway widening project. The Department's position is that it is not responsible for the flooding problem on this parcel because it is simply perpetuating historical drainage, which downstream property owners must accept. Furthermore, to install a culvert along the right of way to Lopez Creek would result in extensive delays, added expense and compromise the environmental integrity of the project. Finally, to fulfill the HW3 request so it can abandon its private culvert and free up the parcel for full development would be a "gift of public funds." The Department's offer of compensation restores HW3 to the "before" condition because it includes the design and construction of a new culvert inlet to replace the existing HW3 inlet that will be destroyed during construction. The Department has agreed to do this even though the property owner's encroachment permit states the owner is responsible for moving the permitted culvert out of the right of way within five days of being given notice.

Department research on the historical background of the drainage in the area and found that the Department's culvert, which the property owner contends is responsible for the flooding, was originally installed in 1936 as a 24-inch culvert. It was replaced with the current 42-inch culvert in 1982. Information from the Department's files suggested the property owner actually installed the private culvert as a result of a complaint from the property owner to the north. In 1991, the property owner of the subject parcel split and sold the property directly north of the subject parcel. In 1993, the owner of the property to the north complained to the Department about flooding. The Department investigated the complaint and did not accept responsibility because it was caused by downstream actions. At the time of the complaint, and during subsequent investigation by the Department, it was determined that development had occurred directly in the path of the historical flow pattern that originally drained the water exiting the Department's culvert. This likely resulted in flooding of the parcel to the north as well as the subject parcel. In 1999, HW3 applied for a Department encroachment permit to install a private culvert, allegedly to address property damage from the Department's 42-inch culvert. Soon after, the subject property owner installed his private drainage system (24-inch culvert). As a result, the Department concluded it was not obligated to re-route the drainage.



**Owner:**

Widening the highway will result in failure of the private drainage system and potentially cause further damage to the property.

**Department Response:**

The increased runoff due to highway widening is calculated to be less than one percent of existing runoff. Even though the Department has determined that the increase is insignificant, consideration for the increased flow was included in the latest offer to the owner.

**Owner:**

The Department should redesign the system to discharge to Lopez Creek within the highway right of way.

**Department Response:**

After review, the Department has determined that it has no responsibility to correct a situation that was created by private forces on private property downstream of the facility.

Attachments

## **Resolution of Necessity Appearance Fact Sheet**

<b>PROJECT DATA</b>	01-DN-101-PM 43.6/45.9 Expenditure Authorization (EA) 345409
<u>Location:</u>	State Route (SR) 101 in Del Norte County
<u>Limits:</u>	North Indian Drive to Ocean View Drive
<u>Cost:</u>	Programmed construction cost: \$8,400,000. Current right of way cost estimate: \$1,100,000.
<u>Funding Source:</u>	SHOPP HB1
<u>Number of Lanes:</u>	Existing: Two lanes Proposed: Two lanes with a continuous two-way left-turn lane
<u>Proposed Major Features:</u>	This is a safety project to reduce collisions within the project limits. This project includes widening of the highway for a two-way left-turn lane and shoulder widening from North Indian Road to Gilbert Creek Bridge. North of this bridge, there will be widening for eight-foot shoulders and for left-turn channelization at Gilbert Way. The improvements will end at Ocean View Drive. A vertical curve improvement is also included immediately south of Gilbert Creek Bridge.
<u>Traffic:</u>	Existing (year 2003): 7,700 Average Daily Traffic (ADT) Proposed (year 2028): 14,400 ADT
<b>PARCEL DATA</b>	
<u>Property Owner:</u>	HW3, LLC (Henry Westbrook III, sole member)
<u>Parcel Location:</u>	West side of SR 101 just north of North Indian Road at PM 43.81 in Del Norte County. Assessor's Parcel Number 101-020-30
<u>Present Use:</u>	Quarry operation south of Lopez Creek; vacant land north of Lopez Creek
<u>Zoning:</u>	Rural Residential Agriculture -1 acre minimum.
<u>Area of Property:</u>	15.44 Acres
<u>Area Required:</u>	Parcel 11519-1 = 2,331 square feet in fee Parcel 11519-2 = 3,148 square feet in fee Parcel 11519-3 = 1,707 square feet in temporary construction easement

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Condemnation Review Panel (Panel) met at the Smith River Rancheria office on December 15, 2006. The Panel members consisted of Donald Grebe, Department of Transportation (Department) Headquarters (HQ) Division of Right of Way and Land Surveys; Matthew Lavrinets, Department's San Francisco Legal Division; Linda Fong, Department HQ's Division of Design; and Dennis Wilson, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owner, HW3, LLC (HW3), were Mr. Richard Smith, Attorney for HW3, and HW3 Project Managers Leroy Blodgett and Jan Sirchuk.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Chief Engineer. The property owner does not contest the project or the acquisition of property; the outstanding issue is the drainage and relocation of the 24-inch culvert that flows diagonally across his property.

### **NEED FOR THE PROJECT**

The purpose of this project is to provide safety improvements that will reduce the frequency and severity of collisions within the project limits. The fatal collision rate is nearly four times the statewide average for similar facilities. In addition, testimonials from property owners and the Department's staff working in the project area provide anecdotal evidence of the need for this project. The collision patterns are attributed to unprotected left-turn movements, typically onto or from nonstandard rural driveways, as well as limited recovery areas adjacent to the traveled way.

State Route (SR) 101 traverses the entire length of the Department's District 1 region, from the Sonoma/Mendocino County line through Mendocino, Humboldt and Del Norte Counties to the Oregon border. This route is known as the Redwood Highway and is considered the "lifeline" of the North Coast. Functionally classified as a rural principal arterial, it is part of the California Freeway and Expressway System and is included in the National Highway System. This portion of SR 101 is eligible for inclusion in the California Scenic Highway System. SR 101 is also designated as part of the "SHELL" system (Sub-system of Highway for the movement of Extra-Legal Loads).

The project area is part of a section of highway originally built in 1936 as a two-lane conventional highway. It is located north of the town of Smith River in Del Norte County and just south of the Oregon border in a coastal agricultural area known as the "Easter Lily Capital of the World." Ninety-five percent of the bulbs for the Easter lily market are grown in the area between Smith River and Brookings, Oregon. Smith River is currently undergoing a shift from an agricultural economy to one based on retirees and vacation/recreation. A demand for oceanfront and ocean view properties is spurring subdivision development in the area, and the subject property owner's company, HW3, is at the forefront of this activity. The Smith River Rancheria has also added to the diversification of the local economy in recent years with the construction and operation of the Lucky 7 Casino just south of the project area.

This is a high priority project for District 1 and is listed on the “Contract for Success” delivery schedule.

### **PROJECT PLANNING AND LOCATION**

This project proposes to provide a two-way left-turn lane channelization and shoulder widening near the community of Smith River from 3.9 miles north of Rowdy Creek Bridge (Br #1-23) to 0.6 miles south of the Oregon State line.

The project was first initiated in November 1995 as an operational improvement project at a cost of \$1.2 million. At that time, the project called for left-turn channelization at the entrance to Kamph Memorial Park, construction of 8 feet of paved shoulders, and an upgrade of Gilbert Creek Bridge. No right of way costs were included at that time. The project was placed on hold due to higher priority projects, and a Project Study Report (PSR) was not completed. Based on the collision history, the Department’s Traffic Safety Office determined that a safety improvement project was needed. In April 2000, HQ’s Traffic Safety approved the project.

During the PSR phase, the project scope was refined to include:

- Realignment of a horizontal and vertical curve.
- Extension of the proposed turn lane from the beginning of the project to Gilbert Creek Bridge.
- Shoulder widening north of Gilbert Creek Bridge to Ocean View Drive.
- Removal of the Gilbert Creek Bridge upgrade so that it could be developed as a separate project.
- A proposed alternative that would widen the road to the east and accommodate the continuous turn lane.

The PSR was approved on September 14, 2001, at an estimated cost of \$6.4 million. Scope changes proposed since the PSR was approved include:

- Removal of the horizontal curve improvement because it was determined to be unwarranted.
- An additional shift of a portion of the alignment 1.8 meters to the east to minimize impacts to biological resources.
- Left-turn channelization (turn pocket) added at Gilbert Way.

The Project Report was approved on September 26, 2005, as a Safety Improvement Project. A Mitigated Negative Declaration under the California Environmental Quality Act and Categorical Exclusion under the National Environmental Policy Act were both approved on September 30, 2005 by the Federal Highway Administration.

Design alternatives were considered. Each alternative considered for the project except the “No Build” alternative provided:

- 12-foot travel lanes.
- 8-foot outside shoulders.

- A two-way left-turn lane from the beginning of the project at PM 43.6 to just south of the Gilbert Creek Bridge at PM 45.3.
- Crest vertical curve improvement south of the Gilbert Creek Bridge.
- Shoulder widening to 8 feet, from north of Gilbert Creek Bridge, to conform to the existing 8-foot shoulders near the end of the project.
- A left-turn pocket at Gilbert Way for northbound motorists instead of a two-way left-turn lane north of Gilbert Creek Bridge.
- Drainage improvements consisting of culvert extensions and replacements as well as construction of drainage channels parallel to the highway.

The following design alternatives were considered but rejected:

- Alternative A – Widen Right: This alternative, which would have widened to the east, was rejected due to potential impacts to Siskiyou checkerbloom and dog violet, host plant to the federally listed Oregon silverspot butterfly.
- Alternative B – Widen Left: This alternative, which would have widened to the west, was rejected because it would have required right of way acquisition from Kamph Memorial Park, which is prohibited under federal regulations.
- Alternative C – Widen Both Sides: This alternative, which would have widened equally on both sides, was rejected because it would have significantly impacted biological resources and encroached on Kamph Memorial park.
- “No Build” Alternative: This alternative would not meet the basic purpose and need. As a result, routine and necessary maintenance work would continue on U.S. Route 101.

The chosen “Build” Alternative (Alternative T) proposed all the common improvements described above and is a modification of Alternative A in that it includes an additional shift to the east along a portion of the alignment south of Gilbert Creek Bridge. This shift minimizes impacts to Siskiyou checkerbloom and eliminates or minimizes impacts to dog violet.

### **NEED FOR SUBJECT PROPERTY**

The right of way requirements for the subject parcel are as follows:

Parcel 11519-01: The Department is retrofitting the Lopez Creek box culvert at this location to better facilitate fish passage, this is required by state law. The Department needs additional permanent right of way to accommodate the larger size of the culvert. As a result, this parcel is being acquired in fee.

Parcel 11519-02: The Department will be widening the shoulders as well as providing slope and drainage ditch improvements at this location. This work will require the relocation of utilities and the extension of the culvert at this location. This is the same 42-inch culvert that is at the center of the dispute between HW3 and the Department. This parcel is being acquired in fee.



Parcel 11519-03: The Department needs this temporary construction easement (TCE) in order to complete the retrofit of the Lopez Creek box culvert. Because no permanent structure will be located in this area, this parcel is not being acquired in fee.

Following the District Condemnation Evaluation meeting, the Department determined that Parcel 11519-04, a minor TCE, was no longer needed, and it was eliminated.

The Department investigated reducing right of way requirements even further and considered reducing the slope and putting in guardrail and/or a retaining wall, thereby reducing the project footprint and eliminating the need to relocate utilities and extend the culvert. The Department determined that, due to safety reasons, none of the changes considered would provide the same level of motorist safety.

The following is a description of the concerns expressed by representatives of the property owner, followed by the Department's response:

**Owner:**

That the Department up-grade the southern access to a public road intersection so the parcel may be developed to its highest and best use as 15 one-acre home sites.

**Department Response:**

The Department determined that meeting the property owner's request for a public road intersection at this location would require additional design and environmental work that would not be possible at this late date. Furthermore, meeting HW3's request in full could be considered an inappropriate use of public funds in that the Department would be helping a private landowner to develop his property. With these limiting conditions in mind, the Department and property owner reached a compromise for the southern driveway access. The Department has offered to design and construct a standard 24-foot wide commercial road approach because the driveway serves a permitted quarry operation that the Department may use for material disposal. The Department confirmed this driveway would be built to the commercial standard, which takes into consideration large truck traffic.

**Owner:**

That the Department upgrade the northern access to a public road intersection so the parcel may be developed to its highest and best use as 15 one-acre home sites.

**Department Response:**

The Department will design and construct a standard residential 12-foot road approach at the northern location. This is an upgrade from the smaller residential driveway that currently exists but which meets the Department's standard for residential driveways. Meanwhile, HW3 will apply for encroachment permits to upgrade to public road intersections at both driveway locations. Once these permits are approved, HW3 will "tag on" the difference between what the Department is designing/building and what HW3 wants, incurring its own costs for the additional design and construction. The Department has received HW3's encroachment permit application, and it is currently under review.

To summarize, the Department is designing a 24-foot commercial driveway approach at the quarry location and a 12-foot residential access at the northern driveway. Upgrading to public road intersections is the responsibility of the property owner.

**Owner:**

That the Department extend the 42-inch highway culvert located at PM 43.82 south along the right of way to Lopez Creek in order to alleviate flooding of the parcel, which allegedly occurs during periods of high storm water runoff. HW3 contends that, when the highway was originally built, drainage was never adequately designed to carry storm water south to Lopez Creek. In more recent years, as a temporary fix, HW3 built a catch basin and drop inlet directly in front of the 42-inch Department culvert and diverted a portion of the water diagonally across the property to Lopez Creek through a 24-inch culvert. This was done under a Department encroachment permit. If the Department were to agree to extend its culvert south along the right of way, HW3 could eliminate its culvert.

**Department Response:**

The owner, whose family has held the property since the early 1900s, claims the flooding problem started after the highway was built, and now is the time to fix it due to the highway widening project. The Department's position is that it is not responsible for the flooding problem on this parcel because it is simply perpetuating historical drainage, which downstream property owners must accept. Furthermore, to install a culvert along the right of way to Lopez Creek would result in extensive delays, added expense and compromise the environmental integrity of the project. Finally, to fulfill the HW3 request so it can abandon its private culvert and free up the parcel for full development would be a "gift of public funds." The Department's offer of compensation restores HW3 to the "before" condition because it includes the design and construction of a new culvert inlet to replace the existing HW3 inlet that will be destroyed during construction. The Department has agreed to do this even though the property owner's encroachment permit states the owner is responsible for moving the permitted culvert out of the right of way within five days of being given notice.

Department research on the historical background of the drainage in the area and found that the Department's culvert, which the property owner contends is responsible for the flooding, was originally installed in 1936 as a 24-inch culvert. It was replaced with the current 42-inch culvert in 1982. Information from the Department's files suggested the property owner actually installed the private culvert as a result of a complaint from the property owner to the north. In 1991, the property owner of the subject parcel split and sold the property directly north of the subject parcel. In 1993, the owner of the property to the north complained to the Department about flooding. The Department investigated the complaint and did not accept responsibility because it was caused by downstream actions. At the time of the complaint, and during subsequent investigation by the Department, it was determined that development had occurred directly in the path of the historical flow pattern that originally drained the water exiting the Department's culvert. This likely resulted in flooding of the parcel to the north as well as the subject parcel. In 1999, HW3 applied for a Department encroachment permit to install a private culvert, allegedly to address property damage from the Department's 42-inch culvert. Soon after, the subject

property owner installed his private drainage system (24-inch culvert). As a result, the Department concluded it was not obligated to re-route the drainage.

**Owner:**

Widening the highway will result in failure of the private drainage system and potentially cause further damage to the property.

**Department Response:**

The increased runoff due to highway widening is calculated to be less than one percent of existing runoff. Even though the Department has determined that the increase is insignificant, consideration for the increased flow was included in the latest offer to the owner.

**Owner:**

The Department should redesign the system to discharge to Lopez Creek within the highway right of way.

**Department Response:**

After review, the Department has determined that it has no responsibility to correct a situation that was created by private forces on private property downstream of the facility.

**PARCEL DESCRIPTION**

The subject property, Parcel Number 11519, is identified as Assessor's parcel number 101-020-30. The size of the parcel is a 15.44-acre oceanfront lot and is zoned Rural Residential Agriculture – 1 acre minimum (RRA-1). HW3 intends to develop the property into 15 one-acre parcels, though there is no approved subdivision plan or environmental document at this time. Lopez Creek runs east to west through the property and essentially divides it in half. That portion lying south of Lopez Creek comprises a bluff area with a permitted quarry operation. The Department has signed an optional disposal site agreement to dispose of fill material from this project at this location. That portion lying north of Lopez Creek is a relatively flat, vacant grassy area. The property's only improvement is 196 linear feet of four-strand barbed wire fencing in poor condition and a 24-inch drainage culvert. Electricity, telephone and water are available to the property; no public sewer service is available. Ingress and egress from SR 101 is from two driveways, one south of Lopez Creek serving the quarry site and the other north of Lopez Creek serving the vacant field.

### **STATUTORY OFFER TO PURCHASE**

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2.

### **PANEL RECOMMENDATION**

The Panel concludes that the Department's project complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the California Transportation Commission.

---

DONALD E. GREBE  
Chief  
Office of Project Delivery  
Division of Right of Way and Land Surveys  
Panel Chair

I concur with the Panel's recommendation:

---

RICHARD D. LAND  
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING  
HEARING ON DECEMBER 15, 2006**

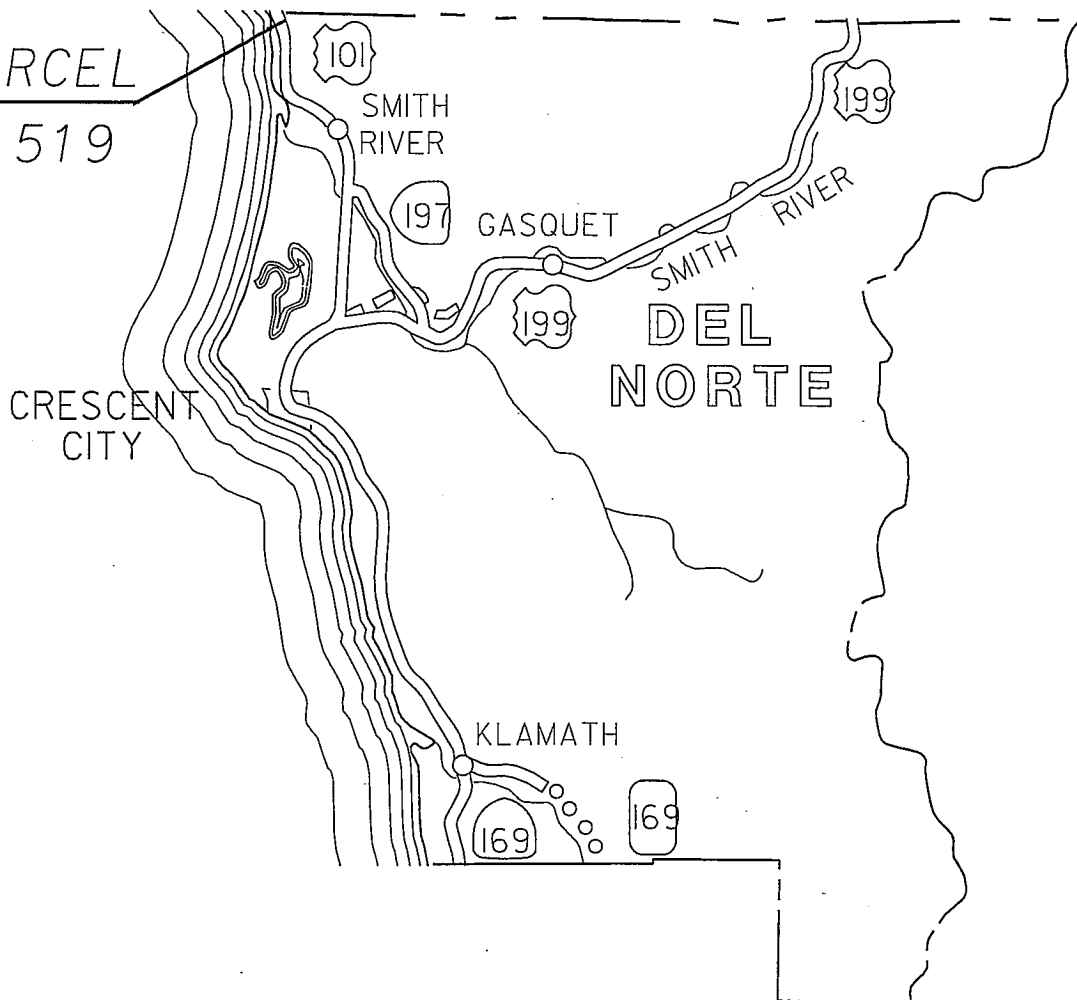
Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair  
Matthew Lavrinets, San Francisco Legal Office Attorney, Panel Member  
Linda Fong, HQ's Division of Design, Panel Member  
Dennis Wilson, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Richard Smith, Attorney for the Owner  
Leroy Blodgett, Representative, HW 3, LLC  
Jan Sirchuk, Representative, HW3 LLC

Charlie Fielder, District 1 District Director  
Dennis McBride, District 1 Design  
Lucy Kostrzewa, District 1 Hydraulics  
Kevin Church, District 1 Project Management  
Lindy Lee, North Region Right of Way Manager  
Walter Bird, North Region Right of Way  
Deborah Gebers, Headquarters Right of Way



PARCEL  
11519



SCALE IN MILES

## EXHIBIT A LOCATION MAP

STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
DEPARTMENT OF TRANSPORTATION

### RIGHT OF WAY

DN-101-KP R070.2/73.7  
(PM R043.6/45.8)

EA(s): 345402 FAN:

DISTRICT	COUNTY	ROUTE	SHEET KP/PM	SHEET NO.	TOTAL SHEETS
01	DN	101	70.2/70.6	1	2
			43.6/43.8		

DATE 10/13/06

EXHIBIT C1

# COUNTY OF DEL NORTE

T. 18 N., R. 1 W., H.M.

SECTION 8  
SECTION 17

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of electronic copies of this map.



HW3 LLC  
PARTNERSHIP GRANT DEED  
DOC# 20011505  
A.P. 101-020-30

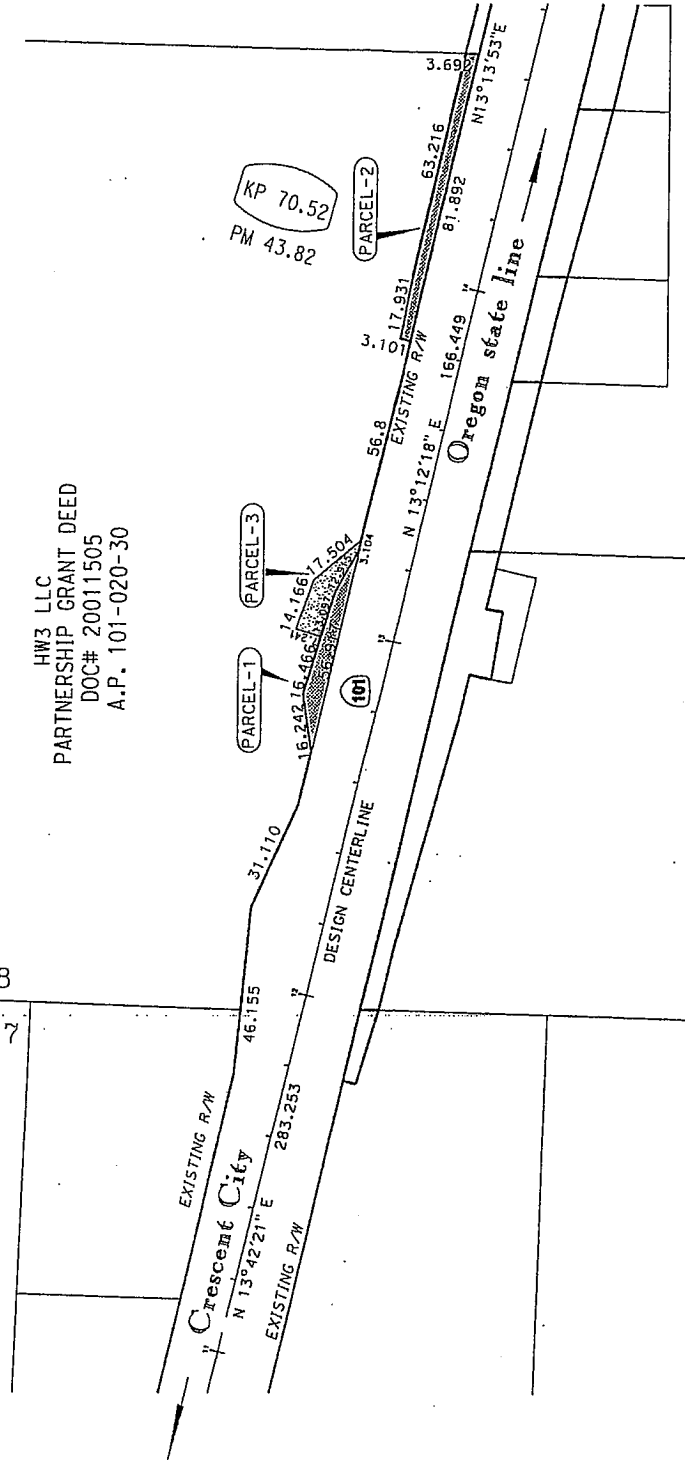


EXHIBIT B

STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY

RESOLUTION OF NECESSITY  
DN-101-KP R070.2/73.71  
(PM R043.6/R045.8)

EAS(S): 345402 FAR#

DISTRICT	COUNTY	ROUTE	SHEET	KP/PM	SHEET NO.	TOTAL SHEETS
01	DN	101	70.2/70.6	2	2	2
				43.6/43.8		

## LEGEND

PARCEL 11519-1,2 ACQUISITION

PARCEL 11519-3 TEMP  
CONSTRUCTION EASEMENT

## NOTES

Coordinates and bearings are on CCS 1983(1991.35) Zone 1. Distances and stationing are grid distances. Divide by 1.000875 to obtain ground distances. All distances are in meters unless otherwise noted. To convert meters to U.S. Survey feet, multiply distance by 3937/1200.